

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

JEFFERY BRADLEY, )  
 ) No. CV 07-1870-HU  
Plaintiff, )  
 )  
v. ) FINDINGS AND RECOMMENDATION  
 )  
MAX WILLIAMS, et al. )  
 )  
Defendants. )  
 )

Jeffery Bradley  
788 W Sixth Avenue  
Eugene, Oregon 97402  
Pro se

John Kroger  
Attorney General  
Kristin A. Winges  
Assistant Attorney General  
Department of Justice  
1162 Court Street NE  
Salem, Oregon 97301  
Attorneys for defendants

HUBEL, Magistrate Judge:

Plaintiff Jeffrey Bradley was an inmate of the Oregon  
Department of Corrections (ODOC) housed at Snake River Correctional  
Institution (SRCI) from November 8, 2005 through September 19,

1 2007. He was released from custody on January 31, 2008. The  
2 defendants are Oregon Department of Corrections (ODOC) supervisors  
3 Max Williams, Director of ODOC and Jean Hill, Superintendent of  
4 SRCI, and Ron Barras and Jason Rux, corrections officers at SRCI.

5 The matters before the court are plaintiff's motion for  
6 summary judgment (doc. # 52) and defendants' cross motion for  
7 summary judgment (doc. # 65). The motions are directed at Bradley's  
8 claim that defendants were deliberately indifferent to a  
9 substantial risk of harm with respect to an assault on Bradley by  
10 a fellow inmate on December 29, 2005.

#### 11 **Factual Background**

12 On December 29, 2005, Barras and Rux were assigned to the gym  
13 to monitor the inmates using the facilities. Barras Affidavit ¶ 9;  
14 Rux Affidavit ¶ 10. Their normal procedure is to move from area to  
15 area. Id. However, it is also "normal" for the officers to converse  
16 with one another throughout the day. Id. Bradley came up to  
17 officers Barras and Rux, who were talking to each other, to request  
18 medical assistance. Rux and Barras Affidavits ¶ 5. When the  
19 officers asked why, Bradley turned his head and showed them that  
20 part of his ear was missing. Id. Asked what had happened, Bradley  
21 "just raised his hands in the air." Rux Affidavit ¶ 5. Barras  
22 removed Bradley from the gym and called for medical attention.  
23 Barras Affidavit ¶ 6. Barras asked Bradley where the incident had  
24 taken place, and Bradley told him the billiards room. Id. Bradley  
25 was taken to medical services. Id. Rux began searching and found  
26 blood on the floor of the billiards room; Barras and others secured

1 the area as a crime scene. Barras Affidavit, ¶ 7; Rux Affidavit ¶  
2 7. Barras found the missing piece of Bradley's ear, and a nurse  
3 took it to the medical facility. Id. at ¶ 8. Bradley was  
4 subsequently taken to a hospital for further treatment. Affidavit  
5 of Bradley Cain, ¶ 9. The inmates in the gym were searched and  
6 returned to their housing units; the inmate involved in the  
7 altercation with Bradley was located. Rux Affidavit ¶ 9; Cain  
8 Affidavit ¶ 10.

9 Both Rux and Barras state that before the incident, they had  
10 no knowledge of a threat having been made against Bradley, or of a  
11 conflict between inmates at the time of the incident. The inmate  
12 who assaulted Bradley was not on Bradley's Conflict List at the  
13 time of the incident. Rux Affidavit ¶ 11; Barras Affidavit ¶ 10.  
14 Bradley does not dispute these statements. Plaintiff's Statement of  
15 Undisputed Facts ¶ 4.

#### 16 **Standard**

17 A party is entitled to summary judgment if the "pleadings,  
18 depositions, answers to interrogatories, and admissions on file,  
19 together with affidavits, if any, show there is no genuine issue as  
20 to any material fact." Fed. R. Civ. P. 56(c). Summary judgment is  
21 not proper if material factual issues exist for trial. Warren v.  
22 City of Carlsbad, 58 F.3d 439, 441 (9th Cir. 1995). A genuine  
23 dispute arises "if the evidence is such that a reasonable jury  
24 could return a verdict for the nonmoving party." State of  
25 California v. Campbell, 319 F.3d 1161, 1166 (9<sup>th</sup> Cir. 2003). Where  
26 the record taken as a whole could not lead a rational trier of fact  
27

1 to find for the non-moving party, there is no genuine issue for  
2 trial. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S.  
3 574, 587 (1986).

#### 4 **Discussion**

5 Bradley asserts that Oregon law, Or. Rev. Stat. § 421.105(2),  
6 requires corrections officers to supervise inmate activity in a  
7 manner that allows them to intervene when inmate-on-inmate assaults  
8 occur. Further, he argues, the ODOC inmate conduct rules prohibit  
9 inmates from fighting, and inmates are punished for fighting or  
10 assault behaviors; thus, inmates are dependent on the intervention  
11 of security staff when assaults occur.

12 In his complaint, Bradley alleges that Rux and Barras, among  
13 others, were aware of a substantial risk of serious harm to inmates  
14 who were using the gym and the adjoining recreational areas, when  
15 the inmates were not adequately supervised. Complaint ¶ 22. Bradley  
16 alleges further that Rux and Barras were deliberately indifferent  
17 to the consequences of their conduct toward inmates at risk for  
18 assault. Id.

19 All parties move for summary judgment. Defendants' motion is  
20 based on three arguments: first, that Bradley has not shown that  
21 the defendants were deliberately indifferent to a risk that he  
22 would be harmed by another inmate; second, even if they were, the  
23 officers are entitled to qualified immunity; and third, that  
24 defendants Williams and Hill should be dismissed because Bradley  
25 has not alleged that they personally deprived him of his civil  
26 rights, and there is no liability under *respondeat superior* in a  
27

1 civil rights claim.

2 Prison officials have a duty under the Eighth Amendment to  
3 protect prisoners from violence at the hands of other prisoners.  
4 Farmer v. Brennan, 511 U.S. 825, 833 (1994). See also Robinson v.  
5 Prunty, 249 F.3d 862, 866 (9<sup>th</sup> Cir. 2001). But not every injury  
6 suffered by one prisoner at the hands of another necessarily  
7 translates into constitutional liability for prison officials  
8 responsible for the victim's safety. Farmer, 511 U.S. at 834. A  
9 prison official violates the Eighth Amendment only when two  
10 requirements are met: first, the inmate must show that he is  
11 incarcerated under conditions posing a substantial risk of serious  
12 harm; and second, the prison official must have a sufficiently  
13 culpable state of mind, i.e., deliberate indifference to inmate  
14 safety. Id.

15 The term "deliberate indifference" entails something more than  
16 mere negligence, and something less than acts or omissions for the  
17 very purpose of causing harm or with knowledge that harm will  
18 result. Id. at 835. It means that a prison official

19 knows of and disregards an excessive risk to inmate  
20 health or safety; the official must both be aware of  
21 facts from which the inference could be drawn that a  
substantial risk of serious harm exists, and he must also  
draw the inference.

22 Id. at 837. In the Farmer case, the Court rejected the argument  
23 that a "prison official who was unaware of a substantial risk of  
24 harm to an inmate may nevertheless be held liable under the Eighth  
25 Amendment if the risk was obvious and a reasonable prison official  
26 would have noticed it." Id. at 842. In other words, Farmer suggests

1 the official must recognize the substantial risk of serious harm he  
2 is disregarding, not just know the facts which give rise to the  
3 risk. But even when the official actually knows of a substantial  
4 risk, he may be found free from liability if he responds reasonably  
5 to the risk, even if the harm ultimately was not averted. Id. at  
6 844.

7 I conclude that when the Farmer standard is applied to the  
8 facts of this case, no reasonable jury could conclude that Officers  
9 Barras and Rux were deliberately indifferent to Bradley's safety.  
10 Even if it were negligent for the two officers to be in the gym  
11 talking to each other at the time of the assault on Bradley, the  
12 Court has been clear that a claim for violation of the Eighth  
13 Amendment requires "more than ordinary lack of due care for the  
14 prisoner's ... safety." Id. at 835. I therefore recommend that  
15 Bradley's motion for summary judgment be denied.

16 As part of their summary judgment motion, defendants move to  
17 dismiss the claims against defendants Williams and Hill, on the  
18 ground that the only allegations against these defendants pertain  
19 to their management of SRCI, and not to any involvement in the  
20 events of December 29, 2005.

21 Section 1983 liability cannot be based on respondeat superior.  
22 Monell v. Dep't of Social Services, 436 U.S. 658, 692-94 (1978);  
23 King v. Atiyeh, 814 F.2d 565, 568 (9<sup>th</sup> Cir. 1987). A supervisor may  
24 be liable based on his own participation in a deprivation, Hansen  
25 v. Black, 885 F.2d 642, 646 (9<sup>th</sup> Cir. 1989), but a "supervisor is  
26 only liable for the constitutional violation of his subordinates if

1 the supervisor participated in or directed the violations, or knew  
2 of the violations and failed to act to prevent them." Taylor v.  
3 List, 880 F.2d 1040, 1045 (9<sup>th</sup> Cir. 1989). See also Jones v.  
4 Williams, 297 F.3d 930, 937 (9<sup>th</sup> Cir. 2002) [supervisor may be liable  
5 if he or she was personally involved in the constitutional  
6 deprivation, or a sufficient causal connection exists between the  
7 supervisor's wrongful conduct and the constitutional violation,  
8 citing Redman v. County of San Diego, 942 F.2d 1435, 1446 (9<sup>th</sup> Cir.  
9 1991) (en banc)].

10 Bradley's allegations against Williams and Hill are that they  
11 did not: 1) hire enough corrections officers to supervise inmate  
12 activity; 2) train staff adequately; 3) report and document threats  
13 to inmates; 4) adequately investigate inmate assaults; and 5)  
14 discipline staff for misconduct. Complaint ¶ 21. Bradley has not  
15 alleged or shown that Williams and Hill were involved in or  
16 connected to the December 29, 2005 assault. Nor has Bradley  
17 alleged Williams or Hill knew of violations and failed to act to  
18 prevent "injury." In view of my recommendation that defendants'  
19 motion for summary judgment be granted, this motion is moot unless  
20 a district judge rejects that recommendation. In that event, these  
21 defendants should be dismissed on the basis of the respondeat  
22 superior issue as well.

23 I recommend that defendants' request for qualified immunity be  
24 denied as moot, unless a district judge rejects these  
25 recommendations.

26 / / /

**Conclusion**

I recommend that plaintiff's motion for summary judgment (doc. # 52) be DENIED and that defendants' motion for summary judgment (doc. # 65) be GRANTED.

**Scheduling Order**

These Findings and Recommendation will be referred to a district judge. Objections, if any, are due January 25, 2010. If no objections are filed, then the Findings and Recommendation will go under advisement on that date.

If objections are filed, then a response is due February 11, 2010. When the response is due or filed, whichever date is earlier, the Findings and Recommendation will go under advisement.

DATED this 6th day of January, 2010.

/s/ Dennis J. Hubel

---

Dennis James Hubel  
United States Magistrate Judge